Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-647

KAREN MARCHIORO, ET AL.,
Appellants,

v.

NEALE V. CHANEY, ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO AFFIRM JUDGMENT AND BRIEF IN SUPPORT OF MOTION

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MOTION

Appellees move for an order affirming the judgment of the Supreme Court of the State of Washington, filed July 20, 1978, 90 Wn.2d 298, 582 P.2d 487, holding that RCW 29.42.020 does not violate the First and Fourteenth Amendments of the United States Constitution.

QUESTION PRESENTED ON APPEAL

Is a state statute under which the membership of the Washington State Democratic Committee is set at two members from each county unconstitutional?

QUESTION PRESENTED BY THIS MOTION

Was the Supreme Court of the State of Washington

correct in holding that appellants failed to demonstrate that their freedom of association was substantially burdened by a state statute setting the membership of the Washington State Democratic Committee at two members from each county?

PARTIES

Appellants, hereinafter referred to as "plaintiffs," consist of eight individuals. Three of the plaintiffs are chairmen of county central committees of the Democratic Party of the State of Washington. Four other plaintiffs allege they are elected representatives to the Washington State Democratic Committee from Democratic legislative district organizations in Washington. The eighth plaintiff is a member of the Washington State Democratic Committee. All plaintiffs allege they are "members" of the Democratic Party of the State of Washington.

Appellee Neale V. Chaney was, at the time the suit was filed, Chairman of the Washington State Democratic Committee. Chaney left that position in August 1978, and is no longer associated with the Washington State Democratic Committee.

The other appellee is the Washington State Democratic Committee, hereinafter "State Committee," whose function is discussed below.

FACTS

RCW 29.42.020 states, in relevant part:

> "*State Committee.* The State Committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organizational meeting."

This statute is part of a continuous line of Washington

statutes creating and regulating the state committees of major state political parties. The first, enacted in 1909, set the composition of the State Committee at one member from each county committee. Laws of 1909, ch. 82, § 6, p. 175. In 1927, the membership was changed to one committeeman and one committeewoman from each county. Laws of 1927, ch. 200, § 1, p. 287. Consequently, the statutory scheme attacked by plaintiffs is almost 70 years old.

The functions of the State Committee were considered and described in *Dahl v. Republican State Committee*, 319 F. Supp. 682 (W.D. Wa. 1970), in which the Democratic State Committee was a named defendant.[1] The district court found that the State Committee performed the following functions:

> "The election of the state committee *is not an integral phase of the presidential-election process.* . . . Like *Sailors*, the functions performed by the state and county committees are *primarily administrative in nature and concern themselves almost exclusively with the internal affairs of the political parties.* No governmental or representative functions are performed by the state committees except insofar as they exercise their prerogative to appoint delegates to the national party conventions and thereby bring their actions within the rule announced in the *Maxey* case. For these reasons, *and because the election of state committeemen by the county committees is not an integral phase of the state-created election process,* I hold that the one-man-one-vote principal does not control the selection of the state committees of the major political parties." 319 F. Supp. at 684-685. (Emphasis supplied)

1. In *Dahl*, RCW 29.42.020 was challenged on the grounds that it violated the Equal Protection Clause of the Fourteenth Amendment. The district court rejected the contention, holding that there was no requirement under the Fourteenth Amendment that the State Committee be apportioned on the basis of population. 319 F. Supp. at 684-685.

A further description of the duties of the State Committee occurs in *King County Republican Central Committee v. Republican State Committee,* 79 Wn.2d 202, 484 P.2d 387 (1971).

> "As a committee designed to function on a statewide level, it is necessarily invested with the inherent power to adopt rules and regulations for its own internal government, as well as to promulgate, subject to the overriding authority of the state convention, intra-party rules governing the statewide operations of the party as a political organization during the interval between conventions." 79 Wn.2d at 212.

Finally, the State Committee is given the following powers by statute:

> "(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention shall designate. The manner, number and procedure for selection of state convention delegates shall be subject to the committee's rules and regulations duly adopted;
>
> "(2) Provide for the election of delegates to the national conventions;
>
> "(3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;
>
> "(4) Provide for the nomination of presidential electors; and
>
> "(5) Perform all functions inherent in such an organization." RCW 29.42.020.

The State Committee does not exercise party policy-making functions. While the State Committee has raised and distributed some money, the amounts have been small, and have gone to the administration of the State Committee, payment of debts, and distribution to Democratic Party candidates nominated to run for office.

In 1976, the Washington State Democratic Convention adopted a Charter of the Democratic Party of Washington, hereinafter "Charter." Article IV(G) (4) of the Charter provides:

> "The State Democratic Committee membership shall be organized according to state law; however, in addition to having two (2) delegates per county as voting members, each legislative district shall elect one (1) voting member. Each district representative shall be allowed to vote on all matters or issues, policies and goals which would reasonably fall within the function of the State Convention and as allowed by state law." Quoted in *Marchioro v. Chaney,* 90 Wn.2d at 301.

This change in the composition of the State Committee from that mandated by RCW 29.42.020 has not been implemented by the State Committee. In the first place, not all legislative district representatives have been elected, and it has been the consistent position of the State Committee that no legislative district representatives shall be seated until all have been elected. Furthermore, the State Committee's position is that by seating the legislative district representatives, it will be in violation of state statute, a situation the State Commmittee understandably wishes to avoid.[2]

Plaintiffs filed this suit in the Superior Court of King County, Washington, requesting, *inter alia,* declaratory relief that the State Committee must be operated in accordance with the Charter, and that those plaintiffs who were validly elected legislative district representatives, were to

2. Resistance to the seating of the legislative district representatives is also mandated by the Charter. Article VIII(A) provides as follows:

> "This Charter is intended to conform to state and federal statutes and to applicable parts of the Charter of the Democratic Party of the United States. If parts of this Charter are found to be in conflict with such statutes or the National Charter, the applicable statute or provision of the National Charter shall govern."

be seated before the State Committee could transact any business. The Superior Court held that RCW 29.42.020 unconstitutionally violated plaintiffs' First Amendment freedom of association, but did not order the seating of the legislative district representatives. Order and Judgment, Appendix to Jurisdictional Statement, p. C-3. The Supreme Court of the State of Washington reversed the superior court's finding of unconstitutionality, on the grounds that plaintiffs had failed to show that RCW 29.42.020 substantially burdened plaintiffs' right of free association. 90 Wn.2d at 312-313. The court further found that the Charter was binding on the State Committee, except for Article IV (G) (4), which conflicted with RCW 29.42.020.

Plaintiffs have never presented this controversy to the National Democratic Party, or its National Committee, in any fashion. However, this controversy has often been considered by the Washington State Legislature, which has refused to enact the change for which plaintiffs are pressing. These refusals have occurred even though the legislature has been controlled by the Democratic Party since 1970 (with the exception of 1970-1972, when the Republican Party controlled the Washington House of Representatives). The state legislature is, of course, apportioned on the basis of population.[3]

3. Relevant bills include H.B. 152, 45th Leg. (1977) (added legislative district representatives and deleted sexual classifications); H.B. 598, 45th Leg. (1977) (removed provisions defining composition and gender of committee); H.B. 850, 45th Leg. (1977) (removed gender provisions and allowed parties to add legislative district representatives); S.B. 2481, 45th Leg. (1977) (similar to H.B. 152, *supra*); H.B. 545, 44th Leg. (1975) (similar to H.B. 152, *supra*); H.B. 747, 43rd Leg. (1973) (added legislative district representatives); and H.B. 507, 42nd Leg. (1971) (substituted legislative district representatives for county representatives). None of these bills left committee.

ARGUMENT

In their Jurisdictional Statement, plaintiffs assert that RCW 29.42.020 substantially burdens their First Amendment freedom of association in the following ways:

A. State regulation of the internal organizations of political parties by itself substantially burdens the rights of party members (Jurisdictional Statecent, p. 10);[4]

B. An individual's right to participate in party affairs is substantially burdened where a statute bars or discourages such participation (Jurisdictional Statement, p. 13);

C. The constitutional right of those plaintiffs elected as legislative district representatives to serve on the State Committee has been substantially burdened (Jurisdictional Statement, p. 7);

D. The constitutional right of party "members" to elect and be represented on a State Committee composed as directed by the State Convention has been burdened (Jurisdictional Statement, p. 8);

E. The constitutional right of the party to administer itself on the basis of equal rights and proportional representation has been substantially burdened (Jurisdictional Statement, p. 8, n. 11);[5]

None of the alleged burdens claimed by the plaintiffs describes a substantial burden of a right protected by the

4. Plaintiffs claim that they are "members" of the Democratic Party of the State of Washington. Plaintiffs cannot claim this status, however, separately from their position as officers in the various Democratic Party organizations, since the Democratic Party itself has no formal procedure by which individuals become members. Moreover, there are no statutory methods for becoming "members". RCW 29.18.200 states:

> "*Blanket Primary Authorized.* All properly registered voters may vote for their choice at any primary election, for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter."

5. *Dahl, supra,* held that there was no requirement under the Equal Protection Clause for the State Committee to be apportioned on the basis of population.

freedom of association guaranteed by the First Amendment. Furthermore, the holding of the Supreme Court of the State of Washington that RCW 29.42.020 does not substantially burden the carrying out by the Democratic Party of its "Purposes and Objectives" is correct. Hence, the decision of the Supreme Court of the State of Washington must be affirmed.

The freedom of association upon which plaintiffs try to rely has its roots in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), and *Bates v. Little Rock*, 361 U.S. 516 (1960). In the former case, the NAACP was sued because of its failure to pay the Alabama corporate license fee. During discovery, Alabama requested a list of the NAACP's members, which the NAACP refused to produce. This Court, discussing the freedom of association, said:

> "*Effective advocacy of both public and private points of view*, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. [Citations omitted] It is beyond debate that freedom to engage in association *for the advancement of beliefs and ideas* is an inseparable aspect of the 'liberties' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. [Citations omitted] . . . It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved." 357 U.S. at 460, 462. (Emphasis supplied)

This Court held that, in the circumstances of the case, disclosure of the membership list of the NAACP constituted a substantial burden on its constitutional rights with

no countervailing compelling state interest, and the state court's judgment of civil contempt was reversed.

In *Bates*, a city licensing ordinance provision required disclosure of the NAACP's membership lists. This Court struck down that provision, stating:

> "[F]reedom of association *for the purpose of advancing ideas and airing grievances* is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the state." 361 U.S. at 523. (Emphasis supplied)

Thus, both *NAACP v. Alabama* and *Bates* dealt with the question of compelled disclosure of membership in a group, and "the vital relationship between freedom to associate and privacy in one's associations." *Bates*, 361 U.S. at 523. These cases thus dealt with state interference with the freedom of individuals to form groups to exercise their First Amendment freedoms of speech and petition, not state regulation of the internal structure of the groups which resulted.

A further aspect of the freedom of association was set forth in *Kusper v. Pontikes*, 414 U.S. 51 (1973). There this Court held unconstitutional an Illinois statute prohibiting an individual's voting in a political party's primary election where that individual had voted in the primary election of another party within the preceding 23 months. The Court held that the right to associate with the political party of one's choice was an integral part of the constitutionally protected freedom of association, 414 U.S. at 57, and that infringement of the right to select the party's candidate for public office in primary elections substantially infringed this freedom.

> "Under our political system, *a basic function of a political party is to select the candidate for public*

> *office to be offered to the voters at general elections.* A prime objective of most voters in associating themselves with a particular party must surely be to gain a voice in that selection process. By preventing the appellee from participating at all in Democratic primary elections during the statutory period, the Illinois statute deprived her of any voice in choosing the party's candidates, and thus substantially abridged her ability to associate effectively with the party of her choice." 414 U.S. at 58. (Emphasis supplied)

RCW 29.42.020 does not exclude plaintiffs in the present case from participating to the same extent as any other citizen in the affairs of the Democratic Party, nor are plaintiffs excluded from any role in selecting the party's candidates for public office. Thus, *Kusper* does not support plaintiffs' claims that the statute substantially burdens their constitutionally protected rights.

Plaintiffs rely substantially on *Cousins v. Wigoda*, 419 U.S. 477 (1975). In that case, delegates elected to the National Democratic Convention pursuant to Illinois statute were not seated by the Convention; instead, a second slate of delegates, not selected pursuant to Illinois statute, was seated by the Convention and allowed later to choose the Illinois representatives to the Democratic National Committee. The Illinois state court held that the second slate of delegates had violated an Illinois court injunction preventing the group from carrying out the functions of delegates. This Court reversed the Illinois court's findings.

The issue in *Cousins* was "whether the Appellate Court was correct in according primacy to state law over the National Political Party's rules in the determination of the qualifications and eligibility of delegates to the Party's National Convention." 419 U.S. at 483. This Court's resolution of the issue was on a narrow and particular basis.

> "But respondents overlook the significant fact that the suffrage was exercised at the *primary election to elect delegates to a National Party Convention. Consideration of the special function of delegates to such a Convention militates persuasively against the conclusion that the asserted interest constitutes a compelling state interest.* Delegates perform a task of supreme importance to every citizen of a Nation regardless of their State of residence. The vital business of the Convention is the nomination of the Party's candidates for the offices of President and Vice President of the United States. . . . If the qualifications and eligibility of delegates to National Political Party Conventions were left to state law 'each of the 50 states could establish the qualifications of its delegates to the various party conventions without regard to party policy, an obviously intolerable result.' *Wigoda v. Cousins*, 342 F. Supp. 82, 86 (N.D. Ill. 1972). Such a regime could seriously undercut or indeed destroy the effectiveness of the National Party Convention as a concerted enterprise engaged in *the vital process of choosing Presidential and Vice-Presidential candidates—a process which usually involves coalition cutting across state lines. The Convention serves the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State.*" 419 U.S. at 489-490. (Emphasis supplied)

Plaintiffs try to extrapolate from *Cousins* the principle that any *state* statute that regulates internal bodies of a *state* political party substantially burdens the party members' freedom of association. Such a conclusion completely ignores the issue and holding of *Cousins*. The controversy in the present case has nothing to do with a national convention or nomination of national candidates. This case deals with *state* regulation of part of a *state* political party.

> "I also agree with the Court that this case intimates no views regarding other efforts to regulate party conventions. Congressional regulation of state conventions or state regulation of state primaries or conventions for state offices raises different considerations requiring a wholly different balance." 419 U.S. at 497, n.*, Powell J. concurring in part, dissenting in part.

Moreover, *Cousins*, and its predecessors, dealt with the freedom of association as part of freedom of speech, the freedom to advance ideas, create controversy, and choose candidates to attempt to implement these ideas through the government. These are the very purposes and functions of national, state and local conventions. The State Committee in this case serves none of these functions, see pp. 2-4, *supra*, and especially not the functions served by the convention in *Cousins*. RCW 29.42.020 places no burden on plaintiffs' rights to attend and participate in national, state or local conventions, nominate national, state or local candidates, or advocate or implement in government the aims of the Democratic Party of the State of Washington. *Cousins* does not extend to protect the alleged substantial burdens upon which plaintiffs base their claims in this cause. See p. 7, *supra*.

The burden is upon the plaintiffs to demonstrates an actual substantial restraint of their First Amendment associational rights. *American Party of Texas v. White*, 415 U.S. 767, 790 (1974). Plaintiffs have shown no burden on any right protected under the decisions of this Court.

> "[G]roup association is protected because it enhances 'effective advocacy.'" *Buckley v. Valeo*, 424 U.S. 1, 65 (1976).

Plaintiffs have not demonstrated that RCW 29.42.020 burdens their "effective advocacy."

Plaintiffs also rely heavily on two lower court cases, *Ripon Society v. National Republican Party*, 525 F.2d 567 (D.C. Cir. 1975), *cert. denied* 424 U.S. 933 (1976), and *Fahey v. Darigan*, 405 F. Supp. 1386 (D.R.I. 1975). In *Ripon Society*, plaintiffs attacked the allocation formula for delegates to the 1976 National Republican Convention, arguing that the party was bound by the one-man, one-vote rule. The Court of Appeals refused to decide whether the case involved state action, 525 F.2d at 576, or whether the issue was justiciable, 525 F.2d at 578, and instead went to the application of the Equal Protection Clause. The court concluded that, assuming the clause applied, it did not require the National Convention to adhere to a one-man, one-vote apportionment, but could be satisfied if the representational scheme "rationally advanced some legitimate interest of the party in winning elections or otherwise achieving its political goals." 525 F.2d at 586-587. The court then approved the delegate selection process chosen by the party.

Thus, on its facts, the case does not apply to the present case. *Ripon Society* involved application of the Equal Protection Clause, not freedom of association. *Ripon Society* involved the make-up of delegations to a *national* nominating convention, not the composition of a *state* political body. Further, *Ripon Society* involved a *convention*, whose functions are vastly different from the functions of the State Committee. The holding of *Ripon Society* is thus consistent with *Cousins*, but in no way controlling in the instant case.

Plaintiffs rely upon some broad language used by the Court of Appeals in *Ripon Society*. The language used in *Ripon Society* was overly broad and went far beyond the issues the court had before it. The unnecessary breadth of

the *Ripon Society* opinion has been recognized by other courts. *Montano v. Lefkowitz,* 575 F.2d 378, 384 (2d Cir. 1978).

In *Fahey v. Darigan, supra,* the district court considered a Rhode Island statute requiring ward committees in the city of Providence to be made up of 19 members. This statute altered the long-time practice of the Democratic Party of having 11-member ward committees. The district court held that the statute violated the freedom of association of the plaintiffs, registered Democratic voters.

The district court in *Fahey v. Darigan* made two fundamental errors in arriving at its decision. First, it failed to make the distinction between those activities protected by freedom of association, that is, group expression, advocacy of ideas, and selection of candidates, which occur in party conventions and party primaries, and internal administrative organizations of political parties. *Cousins v. Wigoda,* 419 U.S. at 487; *Kusper v. Pontikes,* 414 U.S. at 56. Secondly, the district court completely misinterpreted *Cousins.* In *Cousins,* this Court held that the federal interests involved in allowing a party to constitute its National Convention as it desired outweighed the state interest in protecting the integrity of its electoral process. 419 U.S. at 489-491. The district court specifically rejected Justice Powell's concurrence on that very point at 419 U.S. at 497, n.* (quoted p. 9, *supra*). 405 F. Supp. at 1395. Consequently, the reasoning of *Fahey v. Darigan* must be rejected.

This Court has repeatedly recognized the important interest states have in controlling and regulating state elections and the state electoral process. *Dunn v. Blumstein,* 405 U.S. 330 (1972). *Rosario v. Rockefeller,* 410 U.S. 752

(1973). In *Storer v. Brown,* 415 U.S. 724 (1974), this Court said:

> "Moreover, as a practical matter, there must be a a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes. In any event, the States have evolved comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place and manner of holding primary general elections, the registration and qualifications of voters, and the selection and qualification of candidates.
>
> "It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases . . . ." 415 U.S. at 730.

Furthermore, as Justice Blackmun said in *Kusper v. Pontikes, supra*:

> "Surely, at some point, the important interest of the State in protecting its entire electoral system outweighs a minor and incidental burden that happens to fall on a few uniquely situated citizens." 414 U.S. at 63-64, dissenting opinion.

In *Nader v. Schaffer,* 417 F. Supp. 837 (D. Conn. 1976), *affirmed* 429 U.S. 989, 97 S.Ct. 516 (1976), plaintiffs challenged Connecticut's primary system. The district court rejected the challenge, and said:

> "In addition to protecting the associational rights of party members, a state has a more general, but equally legitimate, interest in protecting the overall integrity of the historic electoral process. This includes preserving parties as viable and identifiable interest groups; insuring that the results of primary elections, in a broad sense, accurately reflect the voting of party members." 417 F. Supp. at 845.

RCW 29.42.020 is part of the State of Washington's regulation of its election process. Through its statutes,

the state insures that each major political party, having established itself as such, shall have an administrative body between state party conventions. By doing so, the state is insuring the stability and integrity of the electoral process.[6]

Thus, plaintiffs have not carried their burden of demonstrating that RCW 29.42.020 substantially burdens any of their rights protected under the First Amendment freedom of association. State regulation does not automatically create a substantial burden. Instead, an actual substantial burden must be proven by plaintiffs. *American Party of Texas, supra,* 415 U.S. at 790. There is no showing that the plaintiffs have been barred or discouraged from participating to the same extent as any other citizen in the affairs of the Democratic Party. The cases cited by the plaintiffs do not give them a constitutional right to serve on a state party's state committee performing the functions of the Washington State Democratic Committee, nor do these cases create a constitutional right to structure a state political party in any manner plaintiffs see fit, unfettered by state regulation.

6. The following states have, as part of their regulation of the electoral process, also legislated as to the composition of political party state committees: Arizona (Arizona Rev. Stat., § 16-233); Arkansas (Ark. Stat., 1947, § 3.102); California (Election Code, §§ 8660-8675); Colorado (Col. Rev. Stat., § 1-14-108(2)); Idaho (Idaho Code, § 34-504); Illinois (Ill. Rev. Stat., § 46-7-8(a)); Indiana (Indiana Code 3-1-2-1); Iowa (Iowa Code, § 43.111); Kansas (Kan. Stat. Anno., § 25-3804); Louisiana (La. Rev. Stat., § 18:285(1) (a)); Maryland (Michie's Code, Article 33, § 11-2(a) (1), *et seq.*); Massachusetts (Mass. Gen. Laws, Ch. 52, § 1); Michigan (Mich. Stat. Anno., § 6.1597); Mississippi (Miss. Code, § 23-1-3(a)); Missouri (Mo. Rev. Stat., § 115.623); Montana (Montana Rev. Code, § 23-3403(b)); Nevada (Nev. Rev. Stat., § 293.153); New Hampshire (N.H. Rev. Stat. Anno., Ch. 56, §63); New Jersey (Rev. Stat., Title 19, Ch. 5, § 4); New York (McKinney's Con. Laws of New York Anno., § 2-102(1)); North Dakota (N.D. Century Code Anno., § 16-17-11); Ohio (Baldwin & Page's Ohio Rev. Code, § 3517.03); Oregon (Or. Rev. Stat., § 248.075(1)); South Carolina (Code of Laws of S. Carolina, § 7-9-90); South Dakota (S.D. Cod. Laws, § 12-5-16); Tennessee (Official Tenn. Code Anno., § 2-1304); Vermont (Vt. Stat. Anno., § 17-730); West Virginia (Michie's Code, Ch. 3, Article 1, § 9); Wyoming (Wy. Stat., § 22-4-110).

Furthermore, the Supreme Court of the State of Washington, in its opinion in this case, found that the plaintiffs had failed to show that RCW 29.42.020 imposed any burden upon the "Purposes and Objectives" of the party as set forth in the Charter, Article II. 90 Wn.2d at 310-311. This finding is a further confirmation that plaintiffs have suffered no actual substantial burden on any rights protected by the First Amendment freedom of association. These findings are amply supported by the opinion of the Supreme Court of the State of Washington, and no further argument is required here.

For this reason, the decision of the Supreme Court of the State of Washington must be affirmed.

CONCLUSION

Appellees respectfully submit that the judgment of the Supreme Court of the State of Washington must be affirmed.

DATED this 15th day of November, 1978.

Respectfully submitted,

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